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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970.

No. ~~1-995~~ 70-87

POLICE DEPARTMENT OF THE CITY OF CHICAGO, JAMES B. CONLISK, SUPERINTENDENT OF THE POLICE DEPARTMENT OF THE CITY OF CHICAGO, AND RICHARD J. DALEY, MAYOR OF THE CITY OF CHICAGO,

Petitioners,

vs.

EARL D. MOSLEY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO 56

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IN THE

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OCTOBER TERM, 1970.

No. ____.

POLICE DEPARTMENT OF THE CITY OF CHICAGO, JAMES B. CONLISK, SUPERINTENDENT OF THE POLICE DEPARTMENT OF THE CITY OF CHICAGO, AND RICHARD J. DALEY, MAYOR OF THE CITY OF CHICAGO,

Petitioners,

vs.

EARL D. MOSLEY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

The petitioners Police Department of the City of Chicago, James B. Conlisk, Superintendent of the Police Department of the City of Chicago, and Richard J. Daley, Mayor of the City of Chicago, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on October 29, 1970.

OPINIONS BELOW.

The opinion of the Court of Appeals filed on October 29, 1970, is reported at 432 F. 2d 1256 (1970) and is reproduced in Appendix A to this Petition.

The findings of fact and conclusions of law and the order entered by the District Court on August 19, 1969, are unreported, but are reproduced in Appendix B to this Petition.

The opinion of the Illinois Supreme Court in *City of Rockford v. Grayned*—which is in direct conflict with the opinion of the Court of Appeals here sought to be reviewed—is reported at 46 Ill. 2d 486 (1970) and is reproduced in Appendix C to this Petition.

JURISDICTION.

The judgment of the Court of Appeals for the Seventh Circuit was entered on October 29, 1970 (Appendix A). On January 20, 1971, an order was entered by Mr. Justice Marshall, Associate Justice of this Court and Circuit Justice for the Seventh Circuit, extending the time for filing a petition for writ of certiorari herein to and including February 26, 1971. The jurisdiction of this Court rests on 28 U. S. C. § 1254(1).

QUESTIONS PRESENTED.

1. Whether Section 193-1(i) of the Municipal Code of Chicago, Illinois, by prohibiting picketing and demonstrating on a public way within 150 feet of any primary or secondary school building while the school is in session and one-half hour before the school is in session and one-half hour after the school has been concluded, violates the guarantee of freedom of speech established by the First Amendment to the Constitution of the United States.

2. Whether the same ordinance, by exempting from its restrictions "the peaceful picketing of any school involved in a labor dispute," violates the equal protection of the law guaranty of the Fourteenth Amendment.

3. Whether the same ordinance, by reason of vagueness, denies due process of law in violation of the Fourteenth Amendment.

CONSTITUTIONAL PROVISIONS, STATUTES AND ORDINANCES INVOLVED.

I. CONSTITUTION OF THE UNITED STATES, AMENDMENT I:

"Congress shall make no law . . . abridging the freedoom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

CONSTITUTION OF THE UNITED STATES, AMENDMENT XIV:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

II. UNITED STATES CODE, TITLE 42:

"§*1983. Civil action for deprivation of rights.*

"Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

III. MUNICIPAL CODE OF CHICAGO, ILLINOIS, SECTION 193-1(i):

"193.1 A person commits disorderly conduct when he knowingly:

"* * *

"(i) Pickets or demonstrates on a public way within 150 feet of any primary or secondary school building while the school is in session and one-half hour before the school is in session and one-half hour after the school has been concluded, provided, however, that this subsection does not prohibit the peaceful picketing of any school involved in a labor dispute."

IV. CODE OF ORDINANCES OF THE CITY OF ROCKFORD, ILLINOIS, SECTION 18.1(i):

"A person commits disorderly conduct when he knowingly:

"• • •

"(i) Pickets or demonstrates on a public way within 150 feet of any primary or secondary school building while the school is in session and one-half hour before the school is in session and one-half hour after the school session has been concluded, provided that this subsection does not prohibit the peaceful picketing of any school involved in a labor dispute; . . ."

STATEMENT OF THE CASE.

This suit was filed on October 23, 1968 under 28 U. S. C. A. § 2201 and 42 U. S. C. A. § 1983, for declaratory and injunctive relief against enforcement of Section 193-1(i) of the Municipal Code of Chicago, Illinois. That ordinance provides:

> "193-1 A person commits disorderly conduct when he knowingly:
>
> "* * *
>
> "(i) Pickets or demonstrates on a public way within 150 feet of any primary or secondary school building while the school is in session and one-half hour before the school is in session and one-half hour after the school has been concluded, provided, however, that this subsection does not prohibit the peaceful picketing of any school involved in a labor dispute."

The respondent alleged that this ordinance abridged his rights of freedom of speech, equal protection and due process guaranteed by the First and Fourteenth Amendments to the United States Constitution.

This ordinance had been enacted on March 26, 1968, by way of amendment to the City's disorderly conduct ordinance and became effective on April 5, 1968. It was passed against a background of widespread disorders and considerable violence occurring at that time in, near and around public schools and high schools (as well as colleges and universities), which are matters of common knowledge.

Since early September, 1967 and until April 4, 1967, plaintiff had been picketing on a public sidewalk adjoining Jones Commercial High School in Chicago (A. 15, 16, 17, 18, 29, 57). He had been in the habit of coming there

after his working hours as a postal employee and of pacing back and forth carrying "a big picket sign" that said (A. 18):

> "Jones High School practices black discrimination. Jones High School has a black quota."

Respondent's objective was to force the Chicago Board of Education to make Jones Commercial High School "half black" (A. 16). His committee had presented that demand to the associate superintendent of schools in charge of vocational education (*id.*). At the trial respondent asserted that, according to Board of Education "head counts," there were, "as we sit here right now" (June 6, 1969), 1006 students at Jones Commercial High School, of whom 742 were white, 240 black and 20 Puerto Rican (A. 17). He further claimed that of the black students "less than 100" would graduate. There was no showing that not more than 100 out of 240 is an unduly small percentage of graduations. On cross-examination, respondent admitted (A. 26):

> "No, I could not say that any black student has been denied enrollment at Jones Commercial High School."

It is not, however, contended that respondent's picketing was violent or other than peaceful.

Upon reading in a newspaper of the enactment of the ordinance here in question, respondent inquired of the Human Relations Section of the Police Department (A. 19), a desk sergeant at the nearest stationhouse (A. 21) and the city law department as to the ordinance's applicability to his picketing activities. He was informed that he would have to observe the limitations required by the ordinance in his picketing and that, if he did not, he would be arrested.

Thereupon, respondent stopped picketing and instituted

this action for declaratory and injunctive relief on October 23, 1968 (A. 1).

At the trial in the District Court on June 6, 1969 (A. 56), at the close of respondent's case, the trial judge granted petitioner's motion for a directed verdict (A. 56). In its findings of fact and conclusions of law (A. 56-58), the court ruled that this is a proper proceeding for declaratory judgment and that respondent has standing to bring the action. As to the merits, the District Court held (A. 58):

> "Section 193-1 of the Municipal Code of the City of Chicago does not violate Amendment I of the Constitution of the United States of America since it is a reasonable regulation as to time, place and manner. Rights of free speech and assembly, while fundamental in our democratic society, do not mean that everyone with opinions or beliefs to express may address a group at any public place at any time."

The court also found that the ordinance is not unconstitutionally vague and that the exemption of labor unions is a reasonable classification and does not violate the Fourteenth Amendment. A judgment order dismissing the action was entered by the District Court on August 19, 1969 (A. 59).

In reversing this judgment, the Court of Appeals came to the conclusion (Appendix A, p. 3) that:

> "We think it clear that the ordinance is overbroad. It lays down a blanket prohibition against all forms of picketing or demonstrating (other than labor picketing) within 150 feet of a school no matter peaceful, pristine or innocuous. It prohibits one man carrying a sign from walking on a public sidewalk adjoining a school, without condition or reservation."

In arriving at this result, the Court of Appeals may have been influenced by a misunderstanding of the City's position. The opinion states (Appendix A, p. 2) that "Defend-

ants admit that at all times plaintiff's actions were peaceful and orderly, that he never interrupted the free flow of traffic to and from the school and that they had no reason to believe his activities would lead to acts which were not peaceful, orderly and quiet." In reality, the City's position was and is that, although respondent was peaceful and did not block traffic, there was a serious likelihood that, in this period, his activities might lead to acts which were not peaceful, orderly and quiet. The City also urged that the ordinance was calculated to prevent distraction from and interference with the students—for the most part, children and immature persons—in pursuing their studies, and that, therefore, the enactment was grounded in the State's legitimate interest in furthering public education.

The Court of Appeals deemed it unnecessary to examine respondent's other constitutional contentions (Appendix A, p. 5)—*i.e.*, that the ordinance denied due process, because of vagueness, and violated the equal protection clause, because it exempted labor picketing.

REASONS FOR GRANTING THE WRIT.

I. THE DECISION BELOW IS IN CONFLICT WITH A RECENT DECISION OF THE ILLINOIS SUPREME COURT.

In *City of Rockford* v. *Grayned,* 46 Ill. 2d 486 (1970), the Illinois Supreme Court on September 29 of last year upheld the validity of Section 18.1 (i) of the Code of Ordinances of the City of Rockford, Illinois. (The opinion in *Grayned* is reproduced in Appendix C.) The Rockford measure provides (at 490):

> "A person commits disorderly conduct when he knowingly:
>
> "* * *
>
> "(i) Pickets or demonstrates on a public way within 150 feet of any primary or secondary school building while the school is in session and one-half hour before school is in session and one-half hour after the school session has been concluded, provided that the subsection does not prohibit the peaceful picketing of any school involved in a labor dispute; . . ."

This Rockford ordinance, upheld by the Illinois Supreme Court in *Grayned,* is word for word the same as the Chicago ordinance declared invalid by the Seventh Circuit in the case at bar (except that the Rockford ordinance adds the word "session" in stating "after the school session has been concluded").

In sustaining the above-quoted Rockford provision and another related ordinance of the same city, the Illinois Supreme Court declared (at 488) that "[i]t cannot be doubted that the State has a legitimate interest in preserving the peace and good order of its school system," citing *Brown* v. *Louisiana,* 383 U. S. 131 (1966), and *Cox* v.

Louisiana, 379 U. S. 559, at 574 (1965). The Illinois court also stated (*ibid.*) that "[w]hile the ordinance may be susceptible to unconstitutional application, its constitutionality does not depend on conjectured misapplication."*

Thus, there exists a direct conflict between a decision of a Court of Appeals and a decision of a highest state court, in a state within the same circuit, as to the validity of identical municipal ordinances on federal constitutional questions. This conflict is a valid reason justifying a grant of certiorari to review the judgment below. In the words of John Rutledge of South Carolina at the Constitutional Convention, the purpose of the establishment of one supreme national tribunal was "to secure the national rights & uniformity of Judgmts."

II. THE INVALIDATION BELOW OF MUNICIPAL LEGISLATION DESIGNED TO CREATE A MODEST, RESTRICTED BUFFER ZONE AROUND PUBLIC SCHOOLS DURING SCHOOL HOURS, SO AS TO PROTECT THE EDUCATIONAL PROCESS FROM DISTRACTION AND POSSIBLE VIOLENCE, IS OF SUFFICIENT IMPORTANCE TO MERIT REVIEW BY THIS COURT.

The Court of Appeals held the Chicago ordinance "overbroad." (Appendix A, p. 3.) It did recognize that "picketing . . . contains elements other than pure speech" and may be the subject of reasonable regulation, in which connection it cited *Hughes* v. *Superior Court,* 339 U. S. 460, 464 (1950). But the court below in effect agreed with respondent's position that so long as picketing is nonviolent and is not carried on for an illegal purpose, the time and place of the picketing cannot be regulated.

* The Illinois court also found (at 49) the exemption of peaceful picketing of a school in a labor dispute was a reasonable classification and not unconstitutional. This issue was raised and argued in the case at bar, but was not reached in the opinion of the Court of Appeals.

It was and is the petitioner City's position that regulation of the time and place of otherwise lawful picketing is constitutional if the regulation is reasonably related to a legitimate state interest. In this regard, the City cited *Cox* v. *Louisiana*, 379 U. S. 536 (1965), and the oft quoted language (at 554, 555):

> "The constitutional guaranty of liberty implies the existence of an organized society maintaining public order, without which liberty itself would be lost in the excesses of anarchy. The control of travel on the streets is a clear example of governmental responsibility to insure this necessary order. A restriction in that relation, designed to promote the public convenience in the interest of all, and not susceptible to abuses of discriminatory application, cannot be disregarded by the attempted exercise of some civil right which, in other circumstances, would be entitled to protection. One would not be justified in ignoring the familiar red light because this was thought to be a means of social protest. Nor, could one, contrary to traffic regulations, insist upon a street meeting in the middle of Times Square at the rush hour as a form of freedom of speech or assembly."

The right of local governments to regulate the public order and traffic aspects of constitutionally protected communication of ideas—particularly by means of demonstrations and marches—has been repeatedly recognized and upheld by this Court. It was this right which the Illinois Supreme Court invoked in *Grayned* in upholding the Rockford ordinances.

The Chicago ordinance, petitioners submit, is a reasonable measure designed to prevent the disruption of schools and to forestall violence in an era of violent demonstrations by the creation of a 150 foot "buffer zone" during school hours.

150 feet is no great distance. It does not keep the students from knowing that a demonstration is going on. If

students are interested, they can at suitable times examine into it more closely and participate, if they so desire. But the distance of 150 feet does tend to assure that the primary interest of students generally—acquiring an education and credits and diplomas—will be protected from distraction and interference.

The 150 foot buffer zone also aids the police in forestalling violence, since those bent on violence will make even shorter shrift of the distance limitation. Encroachment over the boundary serves to alert the police against the possibility of more serious transgressions.

The ordinance does not prohibit speech within 150 feet of a school during school hours, except the non-pure form of speech that is picketing and demonstrating. The ordinance does not probihit conversation, or even speechmaking, at the places and times specified. It does not prohibit the distribution of leaflets at such times and places. The ordinance prohibits only picketing and demonstrations and prohibits them only within narrow limits.

Picketing is speech plus other elements. The opinion of the Court of Appeals acknowledged this (Appendix A, pp. 3, 4). This Court had made very clear in *Hughes* v. *Superior Court of California*, 339 U. S. 460, at 464, 465 (1950) that:

> "[W]hile picketing is a mode of communication it is inseparably something more and different . . . [t]he very purpose of a picket line is to exert influences, and it produces consequences, different from other modes of communication. The loyalties and responses evoked and enacted by picket lines are unlike those flowing by appeals by printed word."

The picket line elicits powerful conditioned responses, both favorable and unfavorable. Demonstrations are mass psychology situations educing hypersuggestibility.

The Court of Appeals misconceived the instant case as

one "where the sole question is right of access to a public way for the purpose of expression of views and where there is no danger of interference with a valid state interest" (Appendix A, p. 4). The interest of the state here at stake is its paramount interest in conducting public education of large numbers of children and immature persons free from distraction and possible violence.

It is a distortion of the facts to dwell upon the fortuitous circumstance that the particular individual who filed this test action for declaratory judgment conducted himself peaceably, and to ignore the background of widespread violent demonstrations at and in schools, much of it engaged in by the students themselves, in response to which this legislation was enacted.

The ordinance was narrowly drafted to effectuate weighty and urgent public purposes. Persons sincerely interested in education encounter nothing unreasonable in the modest restrictions of this precautionary measure. It should be upheld. Recognition of such an ordinance's validity is of sufficient public importance to merit such action by this Court.

CONCLUSION.

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Seventh Circuit.

Respectfully submitted,

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February 18, 1971.

APPENDIX A.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit.

September Term, 1970—September Session, 1970

No. 18021

EARL D. MOSLEY,
Plaintiff-Appellant,

v.

POLICE DEPARTMENT OF THE CITY OF CHICAGO, JAMES B. CONLISK, Superintendent of the Police Department of the City of Chicago, and RICHARD J. DALEY, Mayor of the City of Chicago,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

October 29, 1970

Before HASTINGS, *Senior Circuit Judge,* and KILEY and KERNER, *Circuit Judges.*

HASTINGS, *Senior Circuit Judge.* Earl D. Mosley brought this action in the federal district court against the City of Chicago Police Department, the Superintendent of the Chicago Police Department and the Mayor of Chicago seeking declaratory and injunctive relief, pursuant to Title 28 U. S. C. A. § 2201 and Title 42 U. S. C. A. § 1983, to enjoin the enforcement of Chapter 193-1(i) of the Chicago Municipal Code. He alleged in substance that the ordinance

abridges his rights of freedom of speech, equal protection and due process guaranteed by the First and Fourteenth Amendments to the United States Constitution. The district court granted defendant's motion for a directed verdict and to dismiss the complaint. Subsequently, the trial court filed its supporting findings of fact and conclusions of law and entered a decree of dismissal. Plaintiff appeals. We reverse.

From early September, 1967 to April 4, 1968, plaintiff, a federal postal employee, frequently walked upon the public sidewalk adjoining Jones Commercial High School in Chicago carrying a sign that read, "Jones High School practices black discrimination. Jones High School has a black quota."

On April 5, 1968, an amendment to the city's disorderly conduct ordinance became effective prohibiting any picketing or demonstrating on a public way within 150 feet of any primary or secondary school from one-half hour before school hours until one-half hour after school hours.[1] Plaintiff, upon seeing a newspaper announcement of the amendment, contacted the Chicago Police Department and upon inquiry was advised that he would be arrested if he continued to picket the school. Defendants admit that at all times plaintiff's actions were peaceful and orderly, that he never interrupted the free flow of traffic to and from the school and that they had no reason to believe his activities would lead to acts which were not peaceful, orderly and quiet.

---

1. The Chapter 193-1(i) amendment provides:

"193-1 A person commits disorderly conduct when he knowingly: • • •

(i) Pickets or demonstrates on a public way within 150 feet of any primary or secondary school building while the school is in session and one-half hour before the school is in session and one-half hour after the school has been concluded, provided, however, that this subsection does not prohibit the peaceful picketing of any school involved in a labor dispute."

The district court held the ordinance to be a reasonable regulation as to time, manner and place of picketing and not violative of plaintiff's First Amendment rights. It also held the exemption of labor picketing to be a reasonable classification and not violative of the equal protection clause of the Fourteenth Amendment. The court further held the ordinance was not unconstitutionally vague since it had reasonable and readily determinable standards.

We consider first the alleged denial of plaintiff's right of free speech. He argues that Chapter 193-1(i), *supra*, is overbroad.

We think it clear that the ordinance is overbroad. It lays down a blanket prohibition against all forms of picketing or demonstrating (other than labor picketing) within 150 feet of a school no matter how peaceful, pristine or innocuous. It prohibits one man carrying a sign from walking on a public sidewalk adjoining a school, without condition or reservation.

It cannot be questioned that the protection of the First Amendment extends beyond "pure speech" and includes the peaceful expression of views by picketing, marching or demonstrating. *Shuttlesworth* v. *City of Birmingham*, 394 U. S. 147 (1969); *Cox* v. *State of Louisiana*, 379 U. S. 536 (1965); *Thornhill* v. *State of Alabama*, 310 U. S. 88 (1940). In *Thornhill*, the Court dealt with an Alabama statute making it unlawful for any person "without just cause or legal excuse" to "picket" a place of business for the purpose of injuring its lawful business. It expressly noted the statute prohibited a single individual from walking slowly and peacefully back and forth on a public sidewalk in front of the premises of an employer carrying a sign that stated only the fact that the employer did not employ union men. 310 U. S., at 98. The Court declared the scope of the statute too broad since it prohibited conduct that would not occasion imminent and aggravated danger to community inter-

ests and impaired the effectiveness of the exercise of the right to freely discuss a matter of public concern, industrial relations.[2]

Defendants justify this ordinance as a reasonable attempt to prevent the disruption of schools and to forestall violence in an era of protest and demonstration by the creation of a 150 foot "buffer zone" during school hours. There can be no doubt that picketing, since it contains elements other than pure speech, may be the subject of reasonable regulation. *Hughes* v. *Superior Court*, 339 U. S. 460, 464 (1950).[3]

This principle was reaffirmed in *Cox* v. *State of Louisiana*, 379 U. S. 559 (1965), where the Court upheld a statute prohibiting picketing near a courthouse with the intent to obstruct justice for the reason that it was precise and was narrowly drawn to protect a valid state interest. *Accord*, *Cameron* v. *Johnson*, 390 U. S. 611 (1968).

Obviously, the City of Chicago could enact an ordinance to prevent the disruption of the educational process that would not violate plaintiff's right of free speech. This does

2. It cannot be seriously contended, in the context of the instant case, that the issue of race relations today is any less a matter of public concern than was industrial relations in 1940.

3. The examples of regulation of conduct normally associated with the exercise of First Amendment rights are numerous. *Hughes* upheld the state's right to prohibit picketing to enforce a specific demand for selective racial hiring. *Cox* v. *New Hampshire*, 312 U. S. 569 (1941), found a parade licensing scheme constitutional because the license could only be refused for considerations of public convenience. To the same effect is *Kovacs* v. *Cooper*, 336 U. S. 77 (1949), involving loudspeaker regulation. As was stated in *Cox* v. *State of Louisiana*, 379 U. S. 536, 554 (1965), "The rights of free speech and assembly, while fundamental in our democratic society, still do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time." But always there must be a balance struck between the right of the individual to communicate and the rights of society. See, *e.g.*, *Shuttlesworth* v. *City of Birmingham*, *supra*; *Amalgamated Food Employees Union* v. *Logan Valley Plaza, Inc.*, *infra*; *Thornhill* v. *State of Alabama*, *supra*.

not require unnecessarily broad proscription of activities constitutionally subject to state regulation. *N.A.A.C.P.* v. *State of Alabama*, 377 U. S. 288, 307 (1963); *Shelton* v. *Tucker*, 364 U. S. 479 (1960).

In the subject case where the sole question is right of access to a public way for the purpose of expression of views and where there is no danger of interference with a valid state interest,[4] plaintiff's First Amendment right to picket may not be constitutionally denied. *Amalgamated Food Employees Union* v. *Logan Valley Plaza, Inc.*, 391 U. S. 308 (1968). Here, as in *Thornhill* v. *State of Alabama, supra*, and *Davis* v. *Francois*, 5 Cir., 395 F. 2d 730 (1968), the instant ordinance did not evince any attempt to balance the individual's right to effective communication and the state's interest in peace and harmony. As was noted in *Amalgamated Food Employees, supra*, at 315, "* * * streets, sidewalks, parks, and other similar public places are so historically associated with the exercise of First Amendment rights that access to them for the purpose of exercising such rights cannot constitutionally be denied broadly and absolutely."

We conclude that Chapter 193-1(i) denies absolutely plaintiff's right to express his views by the mere carrying of a sign as he walks upon the public sidewalk adjoining the school during school hours. It is, therefore, patently unconstitutional on its face.

---

4. Defendants admitted that plaintiff's actions were at all times peaceful and that they had no reason to believe that his actions would lead to disruption. Indeed, all the ordinance requires for criminal liability is that a man walking on a public sidewalk adjoining a school be carrying a sign. There is no requirement, as in *Cox* v. *State of Louisiana*, 379 U. S. 559 (1965), of an intent to disrupt. There is no prerequisite, as in *Cameron* v. *Johnson, supra*, of an interference with ingress and egress. Nor is there any showing of a legitimate state interest requiring the proscription of any and all signs carried by pedestrians near schools.

Having determined that Chapter 193-1(i) is unconstitutional on its face, we do not deem it necessary to examine plaintiff's other constitutional contentions.

For the foregoing reasons, the judgment of the district court is reversed and this cause is ordered remanded with directions to grant plaintiff the injunctive relief sought below.

REVERSED AND REMANDED.

APPENDIX B.

IN THE UNITED STATES DISTRICT COURT

* * (Caption—No. 68-C-1979) * *

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

This cause came for trial on June 6, 1969 and the Court, having heard the evidence and considered the stipulation of the parties finds the facts and states the conclusions of law as follows:

Findings of Fact.

1. Earl D. Mosley, the plaintiff, prior to March 26, 1968, had repeatedly engaged in the peaceful picketing of Jones Commercial High School carrying a sign or walking in an orderly manner with four or five other persons carrying signs.

2. On March 26, 1968, the City Council of the City of Chicago passed the following ordinance:

> "A person commits disorderly conduct when he knowingly
>
> Pickets or demonstrates on a public way within 150 feet of any primary or secondary school building while the school is in session and one-half hour before the school is in session and one-half hour after the school session has been concluded, provided that this subsection does not prohibit the peaceful picketing of any school involved in a labor dispute," Chapter 193 of The Municipal Code of the City of Chicago, Sec. 1(i).

3. If the plaintiff walks peacefully and quietly in the public right of way during school sessions, as he did prior

to the enactment of the ordinance, plaintiff will be considered in violation of the ordinance and will be subject to arrest by agents of the Police Department of the City of Chicago, on the grounds that he is in violation of the ordinance.

4. The plaintiff therefore sought a Declaratory Judgment pursuant to Section 2201 of the Judicial Code Title 28 to determine the constitutionality of the ordinance.

Conclusions of Law.

1. The complainant properly sought a Declaratory Judgment pursuant to Section 2201 of the Judicial Code Title 28 to challenge the constitutionality of Chapter 193-1(i) of the Municipal Code of the City of Chicago since an actual case or controversy may arise without a citizen subjecting himself to arrest for the exercise of his immemorial First Amendment rights. The plaintiff's customary behavior of peacefully picketing Jones Commercial High School prior to March, 1968, created a legal interest of such immediacy and reality as to enable him to challenge the constitutionality of the ordinance in a Federal court.

2. Section 193-1 of the Municipal Code of the City of Chicago does not violate Amendment I of the Constitution of the United States of America since it is a reasonable regulation as to time, place and manner. Rights of free speech and assembly, while fundamental in our democratic society, do not mean that everyone with opinions or beliefs to express may address a group at any public place at any time.

3. Section 193-1(i) of the Municipal Code of the City of Chicago does not violate Amendment XIV of the Constitution of the United States of America in that the exemption of labor unions is a reasonable classification

and the City has no right to regulate labor disputes as they are governed by Federal labor laws.

4. Section 193-1(i) of the Municipal Code of the City of Chicago is not unconstitutionally vague since the ordinance has reasonable and readily determinable standards.

5. This cause should be dismissed.

/s/ J. S. Perry,
Judge.

Dated: Chicago, Illinois
August 19, 1969.

UNITED STATES DISTRICT COURT.

* * (Caption—No. 68-C-1979) * *

ORDER.

This cause having come on for trial by the court without a jury, and the court having heard argument of counsel and being fully advised in the premises and having filed its findings of fact and conclusions of law simultaneously herewith,

It is Ordered, Adjudged and Decreed that the complaint herein for declaratory judgment be and it hereby is dismissed.

/s/ J. S. Perry,
Judge.

APPENDIX C.

(No. 42895.—Judgment affirmed.)

THE CITY OF ROCKFORD, Appellee, *vs.* RICHARD GRAYNED, Appellant.

Opinion filed September 29, 1970.

Mr. JUSTICE WARD delivered the opinion of the court:

On April 25, 1969, a demonstration was held in front of a high school in the city of Rockford. Richard Grayned, the defendant here, and 40 other demonstrators were arrested. A jury in the circuit court of Winnebago County found the defendant guilty of having violated, in April, 1969, sections 19.2(a) and 18.1(i) of the Code of the City of Rockford and he was fined $25 for each violation. A challenge to the constitutionality of these ordinances has been raised which gives this court jurisdiction on direct appeal.

Section 19.2(a) provides, insofar as is pertinent: "That no person, while on public or private grounds adjacent to any building in which a school or any class thereof is in session, shall willfully make or assist in the making of any noise or diversion which disturbs or tends to disturb the peace or good order of such school session or class thereof * * *."

The defendant first argues that this ordinance is unconstitutional on its face because its "terms are so vague that they fail to give the notice [of what conduct is prohibited] required by the Due Process Clause of the Fourteenth Amendment, and are so broad as to condemn the exercise of First Amendment freedoms." He complains relatedly that the ordinance vests unlimited discretion in law enforcement officials to determine the prohibited con-

duct. We have recently considered and sustained the constitutionality of ordinances and statutes which have been challenged on grounds of being vague and overly broad, including the grounds, which are complained of here, that proscribed conduct was not sufficiently specified and that police were given too broad a discretion in determining whether conduct was proscribed. (See *City of Chicago* v. *Fort*, 46 Ill. 2d 12; *City of Chicago* v. *Meyer*, 44 Ill. 2d 1; *City of Chicago* v. *Lawrence*, 42 Ill. 2d 461; *People* v. *Raby*, 40 Ill. 2d 392.) Much of what we said there has application here and there is no necessity of repetitious or extended discussion. We do observe that while the defendant charges that terms appearing in the ordinance such as "noise" and "diversion" lack constitutional precision and are too indefinite, terms such as "alarm," "disturb," "interfere with," and "hinder" have been determined by us to comply with the constitutional requirements of specificity. (*City of Chicago* v. *Lawrence*, 42 Ill. 2d 461; *People* v. *Raby*, 40 Ill. 2d 392.) The terms here are not constitutionally objectionable.

It cannot be doubted that the State has a legitimate interest in preserving the peace and good order of its school system. (*Cf. Brown* v. *Louisiana*, 383 U. S. 131, 143, 15 L. Ed. 2d 637, 646, 86 S. Ct. 719; *Cox* v. *Louisiana*, 379 U. S. 559, 574, 13 L. Ed. 2d 487, 498, 85 S. Ct. 476.) While the ordinance may be susceptible to unconstitutional application, its constitutionality does not depend on conjectured misapplication. (*People* v. *Raby*, 40 Ill. 2d 392, 397; *Landry* v. *Daley* (N. D. Ill. 1968), 280 F. Supp. 938, 960.) Although the argument that the ordinance has been unconstitutionally applied is not advanced in this case, our stated position is that we shall deal with extreme circumstances which might cause an unconstitutional application of an ordinance "if and when they arise." (*City of Chicago* v. *Fort*, No. 41945.) Our conclusion here is that the ordinance in question on its face is "a valid law dealing with conduct

subject to regulation so as to vindicate important interests of society and that the fact that free speech is intermingled with such conduct does not bring with it constitutional protection." (*Cf. Cox* v. *Louisiana,* 379 U. S. 559, 564; 13 L. Ed. 2d 487, 492.)

It is next contended that section 19.2(a) is void because the penalty provisions applicable to the ordinance would exceed the power to impose penalties granted to municipalities by the legislature. Since section 19.2(a) itself does not contain a provision for a penalty, the general penalty section of the Code of Ordinances applies. That section (City of Rockford Code of Ordinances, ch. 28, sec. 1.8) provides, so far as is pertinent: "It shall be unlawful for any person to violate or fail to comply with any provision of this Code and where no specific penalty is provided therefor, the violator shall be punished by a fine not less than ten dollars and not exceeding two hundred dollars or imprisonment for a term not exceeding six months or by both such fine or imprisonment * * *."

The power of a municipality to provide for fines or penalties, as of the date of the violation here, did not include any authority to jail an offender, excepting the authority to jail in the event of failure to satisfy a fine or costs. (Ill. Rev. Stat. 1967, ch. 24, par. 1—2—1, par. 1—2—9.) Since a municipality can legislate only upon or with reference to that which has been authorized by the General Assembly (*People ex. rel. Skokie Town House Builders, Inc.* v. *Village of Morton Grove,* 16 Ill. 2d 183, 189), that portion of the Rockford ordinance which provided for incarceration attempted to exceed the conferred authority. We consider, however, that this defect does not affect the remainder of the penalty section, that is, section 1.8 absent the power to jail provision, or the section defining the substantive violation, that is, section 19.2(a). In *Brown* v. *City of Chicago,* 42 Ill. 2d 501, 505, we said: "If what remains

after the invalid portion is striken is complete in itself and capable of being executed wholly independently of that which is rejected, the invalid portion does not render void the entire ordinance unless it can be said that the city council would not have passed it with the invalid portion eliminated." We judge that the remainder of the ordinance is complete in itself and capable of being independently executed.

The last contention of the defendant is that his conviction for disorderly conduct under section 18.1(i) of the Rockford Code must be set aside for the reason that this section effects an unreasonable and arbitrary classification violative of the first and fourteenth amendments of the United States Constitution. The ordinance says: "A person commits disorderly conduct when he knowingly: * * * (i) Pickets or demonstrates on a public way within ten feet of any primary or secondary school building while the school is in session and one-half hour before the school is in session and one-half hour after the school session has been concluded, provided that this subsection does not prohibit the peaceful picketing of any school involved in a labor dispute; * * *." Rockford Code of Ordinances, ch. 28, sec. 18.1(i).

The defendant's complaint is directed at the part of the ordinance which provides that the peaceful picketing of a school involved in a labor dispute is not prohibited. However, we do not regard the classification in the ordinance as arbitrary. While a classification cannot, of course, be arbitrary, this court has said: "In order to authorize a judicial review of such classifications it must clearly appear that there is no fair reason for the law that would not require with equal force its extension to others not included. The legislature may determine upon what differences a distinction may be made for the purpose of statutory classification, between provisions otherwise having resemblance, if

such power is not arbitrarily exercised and the distinction has a reasonable basis." (*Bagdonas* v. *Liberty Land and Investment Co.*, 309 Ill. 103, 109.) Too, we said in *People ex rel. Conservation District* v. *Lenover*, 43 Ill. 2d 209, 219: "The burden of proving the arbitrariness of a classification is on the one who challenges it." And, at page 217: "Only if it can be said that the classification is clearly unreasonable and palpably arbitrary will a court declare the statute invalid." We cannot say that the city council of Rockford acted arbitrarily here in making the classification. Whether the council considered that the livelihood of persons involved in a labor dispute would typically be concerned or that it was familiar with the usual form of labor picketing or whether other considerations led to the classification we cannot say. But we can say it would be arbitrary for us to conclude from this distance under the circumstances that the act of the city was one of arbitrary discrimination.

The defendant would have us adopt the view of Justice Black in a concurring opinion in *Cox* v. *Louisiana*, 379 U. S. 559, 581, 13 L. Ed. 2d 487 at 502. There he said that he regarded a statute's exemption of picketing and assembly by labor unions in protest of unfair treatment from the statute's operation as invidious discrimination. However, it must be observed that the expression was that of a single justice, not that of the court. The court's decision on the point rested on other grounds.

Too, the statute there was a broad one, relating to the obstruction of public passageways, including streets, sidewalks and public buildings and it provided that labor organizations were exempt from its application. Justice Black considered that the statute was "trying to prescribe by law what matters of public interest people whom it allows on the streets may or not discuss." (379 U. S. at 581, 13 L. Ed. 2d at 502.) The statute here is a narrow one relating only to picketing or demonstrating within 150 feet of a school in

session which is involved in a labor dispute. It does not have a potential consequence as the one Justice Black condemned.

Accordingly, the judgment of the circuit court of Winnebago County is affirmed.

Judgment affirmed.

Mr. JUSTICE SCHAEFFER, dissenting:

In my opinion section 18.1(i) of the Code makes arbitrary discrimination when it prohibits picketing on a public way within 150 feet of any school building but exempts the peaceful picketing of any school involved in a labor dispute. The considerations suggested in the opinion of the majority are not persuasive, and I am unable to conceive of any reason which would justify the discrimination effected by the ordinance.